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19 United States of America

20 UNITED STATES DISTRICT COURT

21 FOR THE DISTRICT OF ALASKA

22 UNITED STATES OF AMERICA,) Case No.:
23 Plaintiff,)
24 vs.) IN ADMIRALTY
25 JACK SPENCER STEWART,)
26 Defendant.)
27 _____)
28 //

VERIFIED COMPLAINT

1

Case No.:

1 Plaintiff, the United States of America, alleges upon information and belief as follows:
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3

GENERAL ALLEGATIONS

4 1. This is a case of admiralty and maritime jurisdiction against defendant JACK
5 SPENCER STEWART, an individual, as hereinafter more fully appears, and within the meaning
6 of Rule 9(h) of the Federal Rules of Civil Procedure.

7 2. The United States expressly reserves the right to amend this Complaint to include,
8 *inter alia*, additional claims and additional parties.

9 3. The United States is authorized to bring this suit pursuant to 28 U.S.C. § 1345, 33
10 U.S.C. §§ 1321 and 2717, and 42 U.S.C. § 9613.

11 4. Venue is properly in this Court pursuant to 28 U.S.C. §§ 1391, 33 U.S.C. § 2717,
12 and 42 U.S.C. § 9613.

13 5. The United States also brings this action on behalf of the Oil Spill Liability Trust
14 Fund (“Fund”), pursuant to the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*, to recover any
15 and all removal costs and damages incurred directly by the Fund, any removal costs and damages
16 incurred by the Fund through compensation paid to any claimant, and all costs incurred by the
17 Fund by reason of any such claims, including interest, prejudgment interest, adjudicative costs,
18 and attorney's fees.

19 6. Pursuant to the Oil Pollution Act of 1990, 33 U.S.C. § 2712(f), the United States
20 has acquired by subrogation, or may in the future acquire by subrogation, the rights of any claimant
21 or State paid compensation from the Fund, and the United States specifically reserves the right to
22 amend this Verified Complaint to assert any or all such subrogated rights and claims.

23 7. At all times material herein, the tug REDWING (hereafter “REDWING” or
24 “Vessel”) was a vessel, *inter alia*, owned and operated in the United States and at all times material

1 herein was within the jurisdiction of this Court.

2 8. At all times material herein, the tug MECOSTA (hereafter "MECOSTA" or
3 "Vessel") was a vessel, *inter alia*, owned and operated in the United States and at all times material
4 herein was within the jurisdiction of this Court

5 9. Defendant JACK SPENCER STEWART, pursuant to information or belief, is a
6 resident of Adak, Alaska. At all material times JACK SPENCER STEWART was within this
7 district and within the jurisdiction of this Court, including, but not limited to, through ownership
8 and operation of the REDWING and MECOSTA at the time of, and with respect to, the matters
9 sued upon herein.

10 10. At all times material herein, defendant JACK SPENCER STEWART owned the
11 REDWING.

12 11. At all times material herein, defendant JACK SPENCER STEWART operated the
13 REDWING.

14 12. At all times material herein, defendant JACK SPENCER STEWART managed the
15 REDWING.

16 13. At all times material herein, defendant JACK SPENCER STEWART demise
17 chartered the REDWING.

18 14. At all times material herein, defendant JACK SPENCER STEWART controlled the
19 REDWING.

20 15. At all material times the REDWING was a "vessel" within the meaning of, *inter*
21 *alia*, the OPA, 33 U.S.C. § 2701(37), and the CERCLA, 42 U.S.C. § 9601(28).

22 16. At all relevant times, the REDWING contained oil, as such term is defined under
23 the OPA, 33 U.S.C. § 2701 *et seq.*

1 17. At all relevant times, the REDWING contained hazardous substances, as such term
2 is defined in the CERCLA, 42 U.S.C. § 9601 *et seq.*, and implementing regulations.

3 18. At all times material herein, defendant JACK SPENCER STEWART owned the
4 MECOSTA.

5 19. At all times material herein, defendant JACK SPENCER STEWART operated the
6 MECOSTA.

7 20. At all times material herein, defendant JACK SPENCER STEWART managed the
8 MECOSTA.

9 21. At all times material herein, defendant JACK SPENCER STEWART demise
10 chartered the MECOSTA.

11 22. At all times material herein, defendant JACK SPENCER STEWART controlled the
12 MECOSTA.

13 23. At all material times the MECOSTA was a "vessel" within the meaning of, *inter*
14 *alia*, the OPA, 33 U.S.C. § 2701(37), and the CERCLA, 42 U.S.C. § 9601(28).

15 24. At all relevant times, the MECOSTA contained oil, as such term is defined under
16 the OPA, 33 U.S.C. § 2701 *et seq.*

17 25. At all relevant times, the MECOSTA contained hazardous substances, as such term
18 is defined in the CERCLA, 42 U.S.C. § 9601 *et seq.*, and implementing regulations.

19 26. At all times material herein, and by reason of the matters alleged in this Complaint,
20 defendant JACK SPENCER STEWART is a "responsible party" within the meaning of the Oil
21 Pollution Act of 1990, 33 U.S.C. § 2701, *et seq.*

22 27. At all times material herein, defendant JACK SPENCER STEWART was within
23 the scope of entities specified in the CERCLA, 42 U.S.C. § 9607(a), with respect to hazardous

1 substances and the matters alleged in this Complaint.

2 28. For a significant period of time STEWART did not operate the REDWING and
3 MECOSTA and failed to take such actions as were necessary to maintain the vessels in a staunch
4 and seaworthy manner, whether moored or underway, including such actions as would be
5 necessary to maintain short and/or long term safe moorage for the vessels, which, pursuant to a
6 form of contractual relationship, were left unattended for long periods and lashed to a structure
7 and/or pier and/or dock owned by another entity.

8 29. The Gulf of Alaska, and Adak in particular, are particularly and routinely
9 susceptible to easily anticipated and well known weather, sea, wind, and other environmental
10 conditions against which even minimally prudent vessel owners must, as a matter of routine safe
11 marine practice, be prepared to deal with and prepare for.

12 30. Defendant STEWART failed to exercise due care with respect to the oil and
13 hazardous substances aboard the REDWING and MECOSTA.

14 31. Defendant STEWART failed to take such care by failing to take into consideration
15 the characteristics of the oil and hazardous substances aboard the vessels in light of all relevant
16 facts and circumstances, including, but not limited to, failing to protect against anticipated and
17 well known weather and environmental conditions, particularly in view of the conditions of
18 moorage and the vessels themselves, and failing to take such other precautions against foreseeable
19 acts or omissions of, *inter alia*, other persons and acts or omissions of such persons, including
20 those with whom the defendant had forms of contractual relationships.

21 32. On or about December 14, 2015, the tugs REDWING and MECOSTA broke free
22 of their mooring and drifted approximately 600 feet, running aground near a rock jetty (Sweeper
23 Cove near Adak, Alaska), creating a substantial threat of discharge of oil and other hazardous

1 substances upon navigable waters of the United States.

2 33. The United States Coast Guard Sector Anchorage responded to the call that the
3 now-derelict tugs were grounded, unmanned, and contained an estimated 33,000 gallons of fuel
4 and oil, PCBs, and a number of batteries.
5

6 34. Defendant JACK SPENCER STEWART did not deny ownership of the tugs
7 REDWING and MECOSTA and initially participated in the response by preparing a pollution
8 removal plan. That plan was rejected by the Coast Guard due to a lack of appropriate safety
9 measures and response equipment.
10

11 35. Defendant STEWART declined the opportunity to submit a revised removal plan.
12

13 36. On December 16, 2015, the United States Coast Guard Federal On Scene
14 Coordinator (“FOSC”) established a Unified Command comprised of both Federal, State, and local
15 stakeholders to deal with the substantial threat of discharge.
16

17 37. Defendant STEWART failed to take action to respond to the incident and/or
18 mitigate the substantial threat of discharge.
19

20 38. Under authority of the Clean Water Act, 33 U.S.C. § 1321 *et seq.*, the FOSC
21 retained Resolve Towing and Salvage to conduct fuel and hazardous materials removals.
22

23 39. Under the authority of the FOSC and Unified Command, the response transferred
24 fuel, oil products, and hazardous substances from the two tugs to the RESOLVE PIONEER.
25

26 40. Subsequently, contractors completed the offloading of the oil and hazardous
27 substances at facilities in Dutch Harbor, Alaska (43,585 gallons of JP-5 type diesel; 2,470 gallons
28 of hydraulic, waste, lube, gear, and bilge oil; 2,273 gallons of AFFF fire suppressant; 34 batteries,
and PCBs). All tanks on the REDWING and MECOSTA were cleaned and thereafter the
contaminated fuel was shipped to a disposal site where they were properly disposed of.

41. PCBs and other hazardous substances found aboard each tug comprise hazardous substances within the meaning of CERCLA.

42. The National Pollution Fund Center (NPFC) sent a Notice of Potential Liability (NOPL) letter to defendant STEWART informing him that both the REDWING and MECOSTA were identified as sources of a pollution threat.

43. On May 21, 2018, the NPFC sent invoices to defendant STEWART for \$827,717.60 (REDWING-\$431,794.88 and MECOSTA-\$395,922.72). To date, no payments have been made by defendant STEWART and all such amounts are due and owing.

44. The Complaint does not presently assert claims for civil penalties or Natural Resource Damages. The United States expressly reserves the right to bring such claims by amendment of the Complaint or otherwise.

**AS AND FOR A FIRST CAUSE OF ACTION
OIL POLLUTION ACT OF 1990**

45. Plaintiff, United States of America, refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of this Complaint.

46. Pursuant to the Oil Pollution Act of 1990, each responsible party for a vessel from which oil is discharged, or which poses the substantial threat of discharge, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone of the United States, is strictly liable for all costs, damages, and/or disbursements specified in the Act.

47. Pursuant to the Oil Pollution Act, defendant JACK SPENCER STEWART is liable to the United States of America for all such costs, damages, interest, and/or disbursements, in addition to statutory attorneys' fees allowed under OPA, as a result of the matters alleged herein.

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**AS AND FOR A SECOND CAUSE OF ACTION
OIL POLLUTION ACT OF 1990**

48. Plaintiff, United States of America, refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of this Complaint.

49. Pursuant to the Oil Pollution Act of 1990, the Fund shall be subrogated to all rights, claims and causes of action of claimants to whom it has paid compensation.

50. As a result of the OPA Incidents described herein, the Fund may incur costs, damages, and/or disbursements by reason of claims for removal costs and damages brought against it under the Oil Pollution Act of 1990.

51. Pursuant to the Oil Pollution Act, defendant JACK SPENCER STEWART is liable to the United States of America for all such costs, damages, and/or disbursements which may be sustained by the Fund, in addition to statutory attorneys' fees allowed under OPA, as a result of the matters alleged herein.

**AS AND FOR A THIRD CAUSE OF ACTION
OIL POLLUTION ACT OF 1990**

52. Plaintiff, United States of America, refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of this Complaint.

53. Pursuant to the Oil Pollution Act of 1990, 33 U.S.C. § 2717(f)(2), the United States is entitled to, and hereby seeks, a declaratory judgment that is binding in any subsequent action or actions against defendant JACK SPENCER STEWART that said defendant is liable for removal costs and damages in any such subsequent action or actions.

**AS AND FOR A FOURTH CAUSE OF ACTION
(CERCLA, 42 U.S.C. §§ 9601 *et seq.*)**

54. Plaintiff, United States of America, refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of this Complaint.

55. Pursuant to the CERCLA, 42 U.S.C. §§ 9601 *et seq.*, including, but not limited to 42 U.S.C. § 9607, owners, operators, and other entities pertaining to vessels and facilities from which hazardous substances are released, or which pose the substantial threat of release, into the environment and/or navigable waters of the United States, as defined at 42 U.S.C. § 9601(25) and authorized by Section 104 of the CERCLA, 42 U.S.C. § 9604, are strictly liable for all costs specified in the Act.

56. Defendant JACK SPENCER STEWART is liable to the United States by virtue of Section 107(a) of the CERCLA, 42 U.S.C. § 9607(a), for all response costs, remedial costs, and other costs incurred and to be incurred by the United States in connection with the Removal and Response Action pertaining to hazardous substances on and/or discharged from the REDWING and MECOSTA.

**AND AS FOR A FIFTH CAUSE OF ACTION
(CERCLA, 42 U.S.C. § 9613(g))**

57. Plaintiff, United States of America, refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of its complaint.

58. Pursuant to Section 113(g)(2) of the CERCLA, 42 U.S.C. § 9613(g) and 28 U.S.C. § 2201, the United States also seeks a declaratory judgment on liability for response costs that will be binding on any subsequent action to recover further response costs.

**AS AND FOR A SIXTH CAUSE OF ACTION
28 U.S.C. § 3001 *et seq.***

59. Plaintiff, United States of America, refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of this Complaint.

60. Despite the liability, including strict liability, of defendant to the United States, all as alleged in this verified Complaint, on information and belief defendant JACK SPENCER

1 STEWART, in breach of law, including, but not limited to, in violation of the provisions of the
2 Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 et seq., has, inter alia, instead of
3 discharging debts owed to the United States, transferred, sold, spun off, and assigned assets so as
4 to prejudice and cause irreparable harm to the United States.
5

6 61. Despite the liability, including strict liability, of defendant to the United States, all
7 as alleged in this verified Complaint, on information and belief defendant JACK SPENCER
8 STEWART, in breach of law, may hereafter transfer, sell, spin off, and assign, or attempt to
9 transfer, sell, spin off, and assign his assets, including real property, so as to prejudice and cause
10 irreparable harm to the United States.
11

12 62. All such prior and future actions as alleged in the foregoing paragraphs have caused
13 damages, and will cause damages, to the United States in an amount to be established according
14 to proof at trial.
15

16 63. All such future actions as alleged in the foregoing paragraphs will continue to cause
17 irreparable harm to the United States. As a result of the foregoing, defendant JACK SPENCER
18 STEWART shall, pursuant to law and statute, be enjoined from further transferring, selling,
19 spinning off, and assigning, or attempting to transfer, sell, spin off, and assign, their assets,
20 including real property, so as to prejudice and cause irreparable harm to the United States.
21

22 **AS AND FOR A SEVENTH CAUSE OF ACTION**
(PRIORITY OF GOVERNMENT CLAIMS, 31 U.S.C. § 3713)
23

24 64. Plaintiff, United States of America, refers to and incorporates by reference as
25 though fully set forth herein each and every foregoing paragraph of this Complaint.
26

27 65. Despite the liability, including strict liability, of defendant to the United States, all
28 as alleged in this verified Complaint, on information and belief defendant JACK SPENCER
STEWART, in breach of law, has, instead of discharging debts owed to the United States,
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1 transferred, sold, spun off, and assigned assets so as to prejudice and cause irreparable harm to the
2 United States.

3 66. Despite the liability, including strict liability, of defendant to the United States, all
4 as alleged in this verified Complaint, on information and belief defendant JACK SPENCER
5 STEWART, in breach of law, including, but not limited to, may hereafter transfer, sell, spin off,
6 and assign, or attempt to transfer, sell, spin off, and assign their assets, including proceeds of
7 insurance, so as to prejudice and cause irreparable harm to the United States.

8 67. All such prior and future actions as alleged in the foregoing paragraphs have caused
9 damages, and will cause damages, to the United States in an amount to be established according
10 to proof at trial.

11 68. All such future actions as alleged in the foregoing paragraphs will continue to cause
12 irreparable harm to the United States. Pursuant to law and statute, defendant JACK SPENCER
13 STEWART and his officers, servants, employees, representatives, agents, fiduciaries, or other
14 individuals and entities acting on his behalf or with his authorization, are required to discharge
15 their foregoing debt to the United States prior to discharging any other debt or payment.

16 69. To the extent that defendant JACK SPENCER STEWART, and/or his officers,
17 servants, employees, representatives, agents, fiduciaries, or other individuals and entities acting on
18 his behalf or with his authorization, have discharged claims or debts to any other person or entity
19 other than the United States, or in the future discharge claims or debts to any person or entity other
20 than the United States in contravention of, inter alia, 31 U.S.C. § 3713, defendant JACK
21 SPENCER STEWART, and/or his officers, servants, employees, representatives, agents,
22 fiduciaries, or other individuals and entities acting on his behalf or with his authorization, are liable
23 to the United States for the amount of any such payments.

1 70. With respect to any payments in contravention of 31 U.S.C. § 3713, and pursuant
2 to 31 U.S.C. § 3713(b), any and all officers, servants, employees, representatives, agents,
3 fiduciaries, or other individuals and entities making such payments are personally liable to the
4 United States for the amount of any such payments.
5

6 71. The United States reserves the right to amend this Complaint to add additional
7 claims, causes of action, and parties, including, but not limited to, in their individual capacity, any
8 and all officers, servants, employees, representatives, agents, fiduciaries, or other individuals and
9 entities who, in contravention of 31 U.S.C. § 3713(a) and (b), have already discharged, or in the
10 future discharge claims or debts to any person or entity other than the United States.
11

12 **WHEREFORE**, the United States of America prays as follows:

13 14 1. That United States of America be granted judgment against JACK SPENCER
14 15 15 STEWART, pursuant to the complaint of the United States herein;

16 17 2. That the United States of America be granted declaratory judgment against JACK
17 18 18 SPENCER STEWART, for removal costs or damages binding on any subsequent action or actions
18 19 19 to recover further removal costs or damages, plus interest, costs, disbursements, and attorneys'
20 fees;

21 22 3. The United States expressly reserves the right to amend this complaint to add
22 23 23 parties and/or causes of action, as may be necessary; and

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VERIFIED COMPLAINT

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Case No.:

1 4. For such other relief as the Court deems just and proper in the premises.
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Dated: January 17, 2019

JOSEPH H. HUNT
Assistant Attorney General
R. MICHAEL UNDERHILL
Attorney in Charge, West Coast Office
Torts Branch, Civil Division

s/ Vickey L. Quinn
VICKEY L. QUINN
Trial Attorney, West Coast Office
Torts Branch, Civil Division
U.S. Department of Justice

Of Counsel

HELKEI HEMMINGER
National Pollution Funds Center
United States Coast Guard

Attorneys for Plaintiff
United States of America

VERIFICATION

Vickey L. Quinn says:

I am one of the attorneys for plaintiff, United States of America, herein, and make this verification by authority for and on its behalf. I have read the foregoing Complaint, know the contents thereof, and from information officially furnished to me believe the same to be true.

I verify under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated: January 17, 2019

s/Vickey L. Quinn
VICKEY L. QUINN